IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

H.C.P.No.528 of 2006

T.Sekar .. Petitioner

-vs-

1.The Secretary to Government
Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The District Magistrate
and District Collector,
Kancheepuram District,
Kancheepuram. .. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the records of the 2nd respondent in No.B.D.F.G.I.S.V. No.55 of 2005 dated 29.11.2005, and quash the same as illegal and consequently direct the respondent's to produce the detenu Senthil Kumar @ Senthil S/o Sekar, who now confined in Central Prison, Chennai before this Court.

For Petitioner : Mr.K.Gandhi Kumar

For Respondents : Mr.M.Babu Muthu Meeran,
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner, who is the father of the detenu by name Senthil Kumar @ Senthil, who is detained as a "Goonda" as contemplated under the Tamil Nadu Prevention of Dangerous activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14, 1982), by the impugned detention order dated 29.11.2005, challenges the same in this petition.

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2. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor.

3. At the foremost, learned counsel appearing for the petitioner submitted that there was a delay in disposal of the representation of the detenu dated 24.05.2006. With reference to the same, the learned Additional Public Prosecutor has placed relevant details which show that the representation was received by the Government on 29.05.2006, remarks were called for on 30.05.2006 and remarks were received by the Government on 19.06.2006. Thereafter, the file was submitted on 19.06.2006, dealt with by the Under Secretary on 19.06.2006 and by the Deputy Secretary on 20.06.2006. Finally, the Minister for Prohibition and Excise passed an order on 21.06.2006. The rejection letter was prepared on 23.06.2006 and it was sent to the detenu on the same day.

4. Learned counsel for the petitioner by pointing out the fact, that though the Government called for remarks as early as 30.05.2006, the said communication was received by the Collectorate only on 14.06.2006 and report was sent to the Government on 19.06.2006. According to him, in the absence of proper explanation by the person concerned, in respect of the period between 30.05.2006 and 14.06.2006, the delay has prejudiced the detenu in disposal of his representation.

5. In the light of the said contention, we verified the original file, produced by the learned Additional Public Prosecutor. The verification shows that the representation of the detenu was received by the Government on 29.05.2006. If further shows that though the remarks were called for even on 30.05.2006, the said letter was not sent to the Collectorate till 14.06.2006. Only on 14.06.2006, by way of fax, the message was communicated to the Collectorate and, in turn, the Collectorate called for remarks from the Sponsoring Authority and sent a report to the Government on 19.06.2006. There is no explanation for keeping the letter calling for remarks till 14.06.2006 at the Government level. The Courts have taken a view that at the most three days would be excusable in between two stages. In this case, though the letter was ready even on 30.05.2006, unfortunately, the same was not dispatched to the Collectorate and only on 14.06.2006, a fax message was sent to the Collectorate and report was received by the Government on 19.06.2006.

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6. As discussed above, in the absence of proper explanation by the person concerned, we hold that the unexplained delay between 30.05.2006 and 14.06.2006 has caused prejudice to the detenu in disposal of his representation. On this ground, the impugned detention order is liable to be quashed.

7. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with some other case or cause.

gms

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Government
Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The District Magistrate
and District Collector,
Kancheepuram District,
Kancheepuram.

3. The Superintendent
Central Prison, Chennai.

4. The Joint Secretary to the Government,
Public (Law and order) Department
Fort Saint George
Chennai - 9.

5. The Public Prosecutor
High Court Madras

+ one cc to Mr. K. Gandhi Kumar, Advocate sr no. 35086

gm(co)
nm(18.08.2006)

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